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BEFORE THE ARIZONA CORPORATION COMMISSION

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2009 OCT -5 A 9:10

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

IN THE MATTER OF THE FORMAL  
COMPLAINT OF CHARLES J. DAINS AGAINST  
RIGBY WATER COMPANY

DOCKET NO. W-01808A-09-0137

**MOTION TO COMPEL**

1 Charles J. Dains ("Mr. Dains") hereby moves to compel responses to data requests made  
2 to Rigby Water Company ("Rigby") in the above-captioned docket.

3 On Wednesday September 23, 2009, Mr. Dains sent the following four data requests by  
4 e-mail (10:38 a.m.) and first-class mail to Rigby:

5 1-1 Please summarize the status of any current negotiations to sell Rigby Water  
6 Company to the City of Avondale.

7  
8 1-2 Have any court proceedings commenced in connection with a condemnation or  
9 other action to acquire Rigby Water Company?

10  
11 1-3 If the answer to Question 1-2 is "yes," please provide copies of any associated  
12 pleadings.

13  
14 1-4 In the opinion of Rigby Water Company, what would be a fair purchase price for  
15 the company?

16 Mr. Dains asked that responses be provided by October 2, 2009, noting the "very short time-line  
17 in this case."

18 On Friday, October 2, 2009, Rigby mailed (no e-mail) its "responses" to counsel for Mr.  
19 Dains. Rigby did not answer any of the questions, instead objecting on various grounds,  
20 including relevance and that the requests sought confidential information.

21 Rigby's objections were brought in bad faith and are without merit.

ARIZONA CORPORATION COMMISSION  
ED  
DOCKETED BY [signature]

1   **I       Rigby's Objections Were Brought in Bad Faith**

2       Rigby could have immediately raised its cursory objections. Mr. Dains had the courtesy  
3   to e-mail Rigby's attorneys directly so that they would be able to immediately begin preparing  
4   responses with their client. In contrast, Rigby waited eight business days to raise its cursory  
5   objections and then provided them by mail on Friday, October 2, 2009. This ensured that Mr.  
6   Dains' counsel would not receive them any earlier than Saturday, October 3.

7       These objections could have been raised by a first-year associate within one-hour of  
8   receiving the data requests. For two experienced counsel to delay providing their objections as  
9   long as they did was clearly a deliberate attempt to prejudice Mr. Dains' ability to obtain  
10   information that he needs to prosecute his case. The Commission should not allow these types of  
11   dilatory tactics.

12   **II       The Requested Information is Relevant**

13       Mr. Dains advanced facilities valued at \$237,000 to Rigby. Based on its 2008 Annual  
14   Report to the Commission, Rigby's total original-cost plant in service is just \$250,574.51. Based  
15   on these figures, it is clear that Mr. Dains has funded the vast majority of Rigby's plant in  
16   service.

17       Rigby does not dispute that the City of Avondale intends to acquire Rigby, either through  
18   a negotiated transaction or through an eminent domain action. Avondale has budgeted \$1.48  
19   million dollars for the acquisition.<sup>1</sup> Rigby would be unjustly enriched if it were to keep all these  
20   funds and not repay Mr. Dains the balance of what it owes him for his advanced plant.

21       The Avondale acquisition is relevant for two reasons. First, the proceeds will provide  
22   ample funds to resolve Rigby's dispute with Mr. Dains. This makes the sale price relevant.  
23   Second, if the City acquires Rigby through eminent domain, the Commission may lose  
24   jurisdiction to provide relief to Mr. Dains. This makes the status of negotiations and any  
25   condemnation proceedings relevant.

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<sup>1</sup> City of Avondale – Annual Budget and Financial Plan, Fiscal Year 2009-2010, at 196.

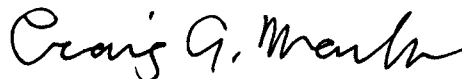
1 **III Any Confidentiality Concerns Could Be Resolved with a Protective Agreement**

2 To Data Requests 1-1 and 1-4, Rigby also objected on the basis that the requested  
3 information was confidential. This objection, if raised in good faith, could easily be cured by  
4 allowing Mr. Dains (and Staff if requested) to sign a protective agreement. Rigby's attorneys are  
5 experienced and should be well aware of the Commission's use of such agreements. Any  
6 testimony related to the confidential information could then be provided under seal.

7 **IV Requested Relief**

8 Mr. Dains asks the Commission to order Rigby Water Company to immediately provide  
9 answers to the referenced data requests.

10 RESPECTFULLY SUBMITTED on October 5, 2009.

11 

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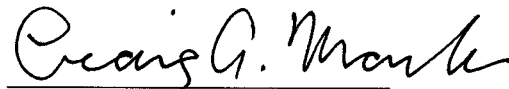
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21 Original and 13 copies **filed**  
22 on October 5, 2009, with:

23  
24 Docket Control  
25 Arizona Corporation Commission  
26 1200 West Washington  
27 Phoenix, Arizona 85007

28  
29 Copy **mailed and e-mailed**  
30 on October 5, 2009, to:

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